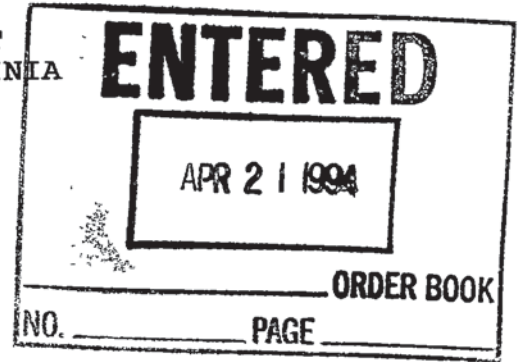


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON



ROY M. SMITH, Commissioner,  
State of West Virginia, Division  
of Labor, on behalf of EVA WHITE,

Plaintiff

v.

Civil Action No. 2:93-1191

BLUESTONE COAL CORPORATION and  
JAMES C. JUSTICE, individually,

Defendant

O R D E R

This matter is before the court on the motion to dismiss the first amended complaint against defendant James C. Justice. Bluestone Coal Corporation filed the motion on behalf of James C. Justice on December 13, 1993, contending that the first amended complaint fails to state a claim upon which relief can be granted against Justice, inasmuch as no allegations are made against him in the first amended complaint. (Mot. to dismiss at ¶ 1.) Bluestone further contends that Justice was insufficiently served, that service cannot be effected upon him, and that his estate is not liable as a matter of law for the claims alleged. Id. at ¶ 2.

Having failed to submit a memorandum in response to the motion, as required by Rule 2.03 of the Local Rules of Civil Procedure, the court, on January 26, 1994, ordered the plaintiff to do so by February 7, 1994. (Order of 1/26/94.) As of this


date the plaintiff has failed to file a memorandum in response to the motion.

Inasmuch as the plaintiff has not opposed the motion, and inasmuch further as there are no allegations made against defendant James C. Justice in the first amended complaint, it is ORDERED that Bluestone Coal Corporation's motion to dismiss the first amended complaint against James C. Justice be, and the same hereby is, granted.

It is further ORDERED that defendant James C. Justice be, and he hereby is, dismissed as a party to this action.

The Clerk is directed to forward copies of this order to all counsel of record.

DATED: April 21, 1994

  
JOHN F. COPENHAVER, JR.  
United States District Judge